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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4489

12 **SEBASTIAN MINH LIEU**
13 **18100 Redbud Circle**
14 **Fountain Valley, CA 92708**

A C C U S A T I O N

15 **Pharmacist License No. RPH 54687**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about August 22, 2003, the Board of Pharmacy issued Pharmacist License
23 Number RPH 54687 to Sebastian Minh Lieu (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on October 31,
25 2014, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

...

5. Section 4300 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480;
or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the

1 applicant or the licensee has been convicted of a crime substantially related
2 to the qualifications, functions, and duties of the licensee in question, the
3 record of conviction of the crime shall be conclusive evidence of the fact
4 that the conviction occurred, but only of that fact, and the board may inquire
5 into the circumstances surrounding the commission of the crime in order to
6 fix the degree of discipline or to determine if the conviction is substantially
7 related to the qualifications, functions, and duties of the licensee in question.

8 As used in this section, "license" includes "certificate," "permit,"
9 "authority," and "registration."

10 9. Section 4060 of the Code states:

11 No person shall possess any controlled substance, except that
12 furnished to a person upon the prescription of a physician, dentist, podiatrist,
13 optometrist, veterinarian, or naturopathic doctor pursuant to Section
14 3640.7, or furnished pursuant to a drug order issued by a certified
15 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to
16 Section 2836.1, or a physician assistant pursuant to Section 3502.1, or
17 naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to
18 either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph
19 (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall
20 not apply to the possession of any controlled substance by a manufacturer,
21 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
22 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner,
23 or physician assistant, when in stock in containers correctly labeled with the
24 name and address of the supplier or producer.

25 Nothing in this section authorizes a certified nurse-midwife, a nurse
26 practitioner, a physician assistant, or a naturopathic doctor, to order his or
27 her own stock of dangerous drugs and devices.

28 10. Section 4301 of the Code states:

The board shall take action against any holder of a license who is
guilty of unprofessional conduct or whose license has been procured by
fraud or misrepresentation or issued by mistake. Unprofessional conduct
shall include, but is not limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty,
fraud, deceit, or corruption, whether the act is committed in the course of
relations as a licensee or otherwise, and whether the act is a felony or
misdemeanor or not.

...

(j) The violation of any of the statutes of this state, or any other state,
or of the United States regulating controlled substances and dangerous
drugs.

...

1 (l) The conviction of a crime substantially related to the qualifications,
2 functions, and duties of a licensee under this chapter. The record of
3 conviction of a violation of Chapter 13 (commencing with Section 801) of
4 Title 21 of the United States Code regulating controlled substances or of a
5 violation of the statutes of this state regulating controlled substances or
6 dangerous drugs shall be conclusive evidence of unprofessional conduct. In
7 all other cases, the record of conviction shall be conclusive evidence only of
8 the fact that the conviction occurred. The board may inquire into the
9 circumstances surrounding the commission of the crime, in order to fix the
10 degree of discipline or, in the case of a conviction not involving controlled
11 substances or dangerous drugs, to determine if the conviction is of an
12 offense substantially related to the qualifications, functions, and duties of a
13 licensee under this chapter. A plea or verdict of guilty or a conviction
14 following a plea of nolo contendere is deemed to be a conviction within the
15 meaning of this provision. The board may take action when the time for
16 appeal has elapsed, or the judgment of conviction has been affirmed on
17 appeal or when an order granting probation is made suspending the
18 imposition of sentence, irrespective of a subsequent order under Section
19 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
20 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
21 or dismissing the accusation, information, or indictment.

22 ...

23 (o) Violating or attempting to violate, directly or indirectly, or
24 assisting in or abetting the violation of or conspiring to violate any provision
25 or term of this chapter or of the applicable federal and state laws and
26 regulations governing pharmacy, including regulations established by the
27 board or by any other state or federal regulatory agency.

28 ...

11. Health and Safety Code section 11350 provides that every person who possesses a
controlled substance, unless upon the prescription of a physician, dentist, podiatrist, or
veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state
prison.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility
license pursuant to Division 1.5 (commencing with Section 475) of the Business
and Professions Code, a crime or act shall be considered substantially related to
the qualifications, functions or duties of a licensee or registrant if to a substantial
degree it evidences present or potential unfitness of a licensee or registrant to
perform the functions authorized by his license or registration in a manner
consistent with the public health, safety, or welfare.

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1 13. California Code of Regulations, title 16, section 1769, states:

2 ...
3 (b) When considering the suspension or revocation of a facility or a
4 personal license on the ground that the licensee or the registrant has been
5 convicted of a crime, the board, in evaluating the rehabilitation of such
6 person and his present eligibility for a license will consider the following
7 criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or
11 offense(s).

12 (4) Whether the licensee has complied with all terms of parole,
13 probation, restitution or any other sanctions lawfully imposed against the
14 licensee.

15 (5) Evidence, if any, of rehabilitation submitted by the licensee.

16 **COST RECOVERY**

17 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request
18 the administrative law judge to direct a licensee found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case. The Board may also include investigation and recovery costs in a
21 stipulated settlement.

22 **DRUG**

23 15. Hydrocodone bitartate/acetaminophen, also known by the brand names Vicodin,
24 Norco, Zydane, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic
25 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),
26 and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone
27 is used as a narcotic analgesic in the relief of pain.

28 16. Codeine is a Schedule II controlled substance as designated by Health and Safety
Code section 11055(b)(1)(G), and is a dangerous drug pursuant to Business and Professions Code
section 4022.

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1 17. Benzodiazepine is a Schedule IV controlled substance as designated by Health and
2 Safety Code Section 11057(d)(9), and is a dangerous drug pursuant to Business and Professions
3 Code section 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 (February 28, 2013 Convictions for Unlawful Possession of a Controlled Substance
6 and Threatening Great Bodily Injury or Death on August 26, 2012)

7 18. Respondent is subject to disciplinary action under sections 490 and 4301 subdivision
8 (l) in that he was convicted of crimes that are substantially related to the qualifications, duties,
9 and functions of a pharmacist. The circumstances are as follows:

10 a. On or about February 28, 2013, in a criminal proceeding entitled *People*
11 *of the State of California vs. Sebastian Minh Lieu*, in Orange County Superior Court case number
12 12WF2518, Respondent was convicted on his plea of guilty of felony violation of Health and
13 Safety Code section 11350 subdivision (a), unlawful possession of a controlled substance and
14 misdemeanor violation of Penal Code section 422, willfully threatening to commit a crime which
15 will result in death or great bodily injury to another person. The facts that led to the convictions
16 are as follows:

17 b. On August 26, 2012 at approximately 6:20 a.m. Garden Grove Police
18 were called to the scene of a road rage incident. The reporting party (RP) told officers that she
19 and her husband had been in a lane change dispute on the freeway with a two door silver Honda,
20 the silver Honda then followed RP's vehicle off of the 22 Freeway, onto surface streets and into
21 the parking lot of RP's place of employment. The Honda then parked directly behind the RP's
22 vehicle and Respondent exited the vehicle. Respondent pulled a black semiautomatic handgun
23 out of his vehicle's trunk and threatened to shoot RP. RP fled from her vehicle into her place of
24 employment and called the police, Respondent then left the area in his vehicle.

25 c. RP's husband was able to get the license plate of Respondent's vehicle.
26 The police found Respondent's home through his license plate record and upon arriving at the
27 home found Respondent's silver Honda parked outside. Respondent consented to a search of his
28 home and upon request by the officers consented to a search of a small safe next to his bed.

1 Officers found 1,118 benzodiazepine pills, 387 hydrocodone pills, 261 sedatives, 242 muscle
2 relaxant pills, 5 opiate replacement pills, 2 codeine pills, 1 Levitra pill and over \$5,000 in cash in
3 the safe.

4 d. As a result of his conviction, on or about February 28, 2013, Respondent
5 was sentenced to 180 days in county jail, with credit for treatment in a residential rehabilitation
6 program, 3 years formal probation, and ordered to pay fines and jail booking fees associated with
7 his conviction.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct – Moral Turpitude)

10 19. Respondent is subject to disciplinary action for unprofessional conduct under section
11 4301(f) of the Code in that Respondent threatened an other individual with great bodily injury or
12 death acts that constitute of moral turpitude, as detailed in paragraph 18, which is incorporated
13 herein by reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

16 20. Respondent is subject to disciplinary action for unprofessional conduct under section
17 4301(j) of the Code in that he violated California Health and Safety Code sections 11350(a),
18 possession of a controlled substance without a prescription, as set forth in paragraph 18, which is
19 incorporated herein by reference.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct – Violation of Chapter)

22 21. Respondent is subject to disciplinary action for unprofessional conduct under section
23 4301(o) of the Code in that he violated the Pharmacy Act by illegally possessing controlled
24 substances in violation of Code section 4060, as is set forth in paragraph 18 above, which is
25 incorporated herein by reference.

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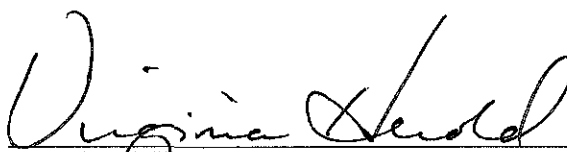
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacist License Number RPH 54687, issued to Sebastian Minh Lieu;
2. Ordering Sebastian Minh Lieu to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/4/13



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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